

Legal Assistance Resource Center

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S.B. 389 -- Court operations

Judiciary Committee public hearing -- March 10, 2014

Testimony of Raphael L. Podolsky

Recommended Committee action: REVISIONS TO SECTIONS 5 AND 6
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Section 5 of this bill deals with hearings on family violence restraining orders. Section 6 deals with the locations of housing courts. We ask the Committee to make drafting changes to these two sections to avoid unintended undesirable consequences.

(1) Temporary restraining orders (Sec. 5): Section 5 appears to preclude the scheduling of a hearing on a temporary restraining order (TRO) unless the affidavit sets out a prima facie case. We understand the logic of this, but we are concerned that the practical implications will be very harmful to vulnerable self-represented TRO applicants. Our experience is that many such applicants have little skill at properly drafting the affidavit, and an unsophisticated pro se affidavit may not be sufficient for the issuance of an ex parte TRO, even though the applicant is in fact eligible. Recognizing this reality, some judges will schedule a hearing on the TRO if there is reason to believe that the evidence at such a hearing will justify its issuance; and, indeed, the applicant's sworn testimony at the hearing may provide the key facts that were missing from the affidavit. We urge the Committee to modify the language of this section in a way that makes clear that a hearing can be scheduled, even though the affidavit may not be sufficient for an ex parte order. In a real sense, lives can be at stake. The wording of lines 182-185 could be changed to read:

Upon receipt of the application, the court shall [order that] schedule a hearing on the application to be held not later than fourteen days from the date of the [order] application, except that the court, in its discretion, may choose not to schedule a hearing if the allegations set forth in the affidavit do not meet the requirements of subsection (a) of this section and it is unlikely that testimony presented at a hearing will bring the facts within such requirements.

(2) Housing court locations (Sec. 6): We believe that Section 6 is intended to give the Chief Court Administrator (CCA) the discretion to assign housing matters to the Judicial District court location (rather than the Geographic Area court location) in those districts that do not have housing courts. It is not intended to allow the CCA to eliminate any of the six Judicial District-level specialized housing sessions (commonly called "housing courts"). As we read Section 6, however, the bill can be interpreted as doing this, because of the bracketing out of the six housing courts in I. 225-226. To avoid any misinterpretation, we suggest that the language of C.G.S. 51-348(b)(3)(A) in I. 224-230 be changed to read:

....except that (A) venue shall be in the judicial district in the judicial districts of Hartford, New Britain, New Haven, Fairfield, Waterbury, [Middlesex, Tolland] and

(continued on the reverse side....)

Stamford-Norwalk and, in addition, in any other judicial district for which the Chief Court Administrator determines that the prompt and proper administration of judicial business requires that venue for housing matters be in such judicial district.